IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) No.1052 of 2007

Prakash Jayawant Koli
7 Aakar House, Ganagaradi
Trombay, Koliwada
Mumbai 400 088 ... Petitioner

vs

State of Maharashtra
through Secretary, Industry Energy
& Labour Department, Mantralaya
Mumbai 400032 ... Respondents

Mr A.S Peerzade for the petitioner.
Mr Milind More AGP for respondents.

CORAM: SWATANTER KUMAR,C.J.,&
DR D.Y.CHANDRACHUD, J.

JUDGMENT RESERVED ON 22.8.2007
JUDGMENT DELIVEREDON 20.9.2007

JUDGMENT(Per Swatanter Kumar,C.J.):

Rule. Respondents waive service. By consent Rule made returnable forthwith. Heard both sides.

1. In this petition under Articles 226 of the Constitution of India, the petitioner has prayed for quashing of the order dated 24th January 2007 passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane. The challenge is on the ground that there was no evidence before the

Scrutiny Committee to come to the conclusion that the caste certificate was obtained by misrepresentation or otherwise and the petitioner was not entitled to the benefit thereof. It is also argued on behalf of the petitioner that the impugned order suffers from the non application of mind and no proper reasons have been recorded while passing that order.

2. The petitioner claims that he belongs to Mahadeo Koli caste. On 2nd November 1982 the caste certificate was issued by the Executive Magistrate, Uran, Raigad, certifying that the petitioner belongs to Mahadeo Koli caste. This certificate was issued when the petitioner was 10 years old and according to the petitioner same was not obtained with any mala fide intention or for the purpose of securing employment. The petitioner was called for oral interview by M/s Rashtriya Chemicals and Fertilizers Ltd (RCF) for the post of Mazdoor Grade II. The petitioner was selected and a letter of appointment was issued in his favour on 31st May 1996. The letter of confirmation was issued by the RCF on 6th August 2001. Thus the petitioner became a permanent employee of the company. During the entire period of his service at no point of time the petitioner was given to understand that his appointment or confirmation or promotion was subject to verification of the caste certificate submitted

by him at the time of his appointment. Vide letter dated 12nd February 2003 the petitioner was promoted to the post of mazdoor Grade I by the company. After a period of 7 years the company, on 7th November 2003, referred the caste certificate of the petitioner to the Scrutiny Committee, which had been constituted under the provisions of the the Maharashtra Schedule Castes, Scheduled Tribes Denotified Tribes (Vimukta Jaties) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the Rules framed thereunder.

3. By letter dated 8th May 2007 the services of the petitioner were terminated by the respondents with immediate effect. The termination letter has already taken effect and the petitioner is no more in the employment.

4. The petitioner was issued a show cause notice. He appeared before the Scrutiny Committee but according to the petitioner the the committee without following the due procedure prescribed under the regulations passed the impugned order dated 24th January 2007 which was subsequently communicated to the company and in turn the company issued the order on 22nd March 2007 to the petitioner. The

impugned order is alleged to have been passed on a letter dated 25th April 2006 issued by the Tahasildar, Uran. Against the said order the petitioner had also moved a representation to the Chairman of the company and having failed to obtain any favourable order, the petitioner has challenged the correctness of that order before this court.

5. The petitioner was admittedly appointed to the post of mazdoor Grade II on 31st May 2006. The said appointment order has been annexed to the petition at Exh A. The name of the petitioner is shown at serial no.2 in the said order and column no. 5 of the said order shows that the petitioner belongs to Scheduled Tribe as per the certificate claiming to be a Koli by caste. The petitioner thus was appointed against the vacancy reserved for Scheduled Tribe and the basis for such appointment was obviously the letter dated 2nd November 1982. It was clarified, vide letter dated 25th April 2005 from the Tahasildar of that area that letter dated 2nd November 1982 was not issued by that office and there was no record to that effect. The Scrutiny Committee had issued notice to the petitioner and after taking into consideration various aspects it had passed the order dated 24th January 2007. The petitioner had produced seven documents to justify his claim and all the said seven documents were

noticed by the Scrutiny Committee. In order to show that the petitioner had not acted bona fide, the Committee noticed the following facts:

> "3. The applicant by the letter dated 9.6.2005 had informed to the committee that right from his ancestor a period their caste has been recorded as Koli and they all belongs to Koli caste which is included in Special Backward Category and had withdrawn his claim belonging to Scheduled Tribe and since the caste Koli which is enumerated in Special Backward Class list requested the committee to rant the benefit of the Government Resolution dated 15th June 1995.
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> 4. Again the applicant by its letter dated 14.9.2005 had informed to the committee that due to mistake, he had given the letter dated 9.6.2005 withdrawing his claim towards Mahadeo Koli, Scheduled Tribe and wishes to take back the letter. He has also attached zerox copy of his uncle Shri Tukaram Askar Koli's school leaving certificate issued by Bombay Municipal Corporation School Turbhe, Mumbai 88 bearing no. 830 dated 13h October 2001 wherein the caste is recorded as Koli of the period 1968.
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> 5. The committee felt doubtful of the case and it was given to the Vigilance Cell as per the Maharashtra Act No. XXIII 2001 for further detailed enquiry.
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> a) The Vigilance Cell furnished it report on 3.4.2006 with the following findings and documents.

Sr No	Reg No	Name	Caste record	Date of birth	Date of admission	Relationship with the applicant
1.	147/1	Chander P Koli	Hindu Koli	20.9. 21	2.1.27	Relative
2.	48/1	Hareshwar K Patil	Hindu Koli	15.1.41	22.6.56	Relative
3.	201/61	J.H.Koli	Hindu	15.6.44	14.5.54	Cousin brother
4.	206/61	J A Koli	Hindu	15.6.48	14.6.50	Father
5.	40/1	C P Koli	Hindu Sonkoli	1.6.42	29.7.48	Relative
6.	830	T A Koli	Hindu	15.6.55	20.7.68	Uncle
7.	208/4	K H Vaity	Hindu Koli	15.4.74	3.4.41	Cousin uncle

The aforesaid an extract of primary admission general register obtained by the police inspector of the vigilance cell from the head master, Brihamnumbai Mahanagarpalika Turbhe Primary Marathi School, Turbhe, Koliwada Mumbai 400088 revels that the applicant's father, uncle's and cousin brothers caste is recorded as only Hindu of the period 1954 and 1968 whereas the relatives and cousin uncle's caste is recorded as Hindu Koli of the period of 1927 to 1968 and 1941 respectively.

b) The vigilance officer also obtained zerox certified copy of the applicant's uncle's school leaving certificate of Turbhe Marathi School, Turbhe Koliwada Mumbai 88 wherein the caste is recorded as Hindu only of the period 1968. The same document of his uncle was submitted to this committee alongwith the withdrawal application wherein the caste is recorded as Hindu Koli

c) The affinity of the applicant is not proved towards Mahadeo Koli, Scheduled Tribe”

6. After noticing the above factual matrix and the facts disclosed by the vigilance cell, the Committee came to the conclusion that the petitioner as well as his other relations and ancestors were Hindu Koli and were not Mahadeo Koli, a caste covered under the notification. The Committee rightly observed that the petitioner had taken the advantage of the benefit, which was expected to accrue to somebody else, and used the same for seeking employment with full knowledge of the facts. The Committee had relied upon the judgment of the Supreme Court in the case of State of Maharashtra vs Milind and ors (2001) SCC (I&S) 177.

7. On behalf of the Government, besides reiterating the conclusion of the Committee, it has also been stated that the petitioner had procured appointment on the basis of a fake certificate and keeping in view the provisions of sections 10 and 11 of the Act, which are penal in nature, it would be unfair and inequitable to give any benefit to the petitioner.

8. Above are the findings of facts which have been arrived at by the Scrutiny Committee in the presence of the petitioner and after giving him adequate opportunity to put forward his case. These findings of facts could hardly be interfered with by

this court in exercise of its powers under Article 226 of the Constitution. In somewhat similar circumstances this Court, in the case of Parinda Milind Keer vs Indian Oil Cororation Ltd – (Writ Petition Lodging No. 1110 of 2007 decided on 19th July 2007), held as under:

> "The conduct of a petitioner has always been considered as relevant consideration for exercise of the jurisdiction of the court under Article 226 of the Constitution. Wherever benefit is obtained by fraud or misrepresentation, the time and the concept of acquiescence, has hardly any scope because it would primarily depend upon detection of misrepresentation or fraud. Situation may be different where despite such detection the authorities acquiesced of the same, sleep over the matter and take no steps in accordance with law for considerable time. That is not the situation in the present case. The line of distinction between the administrative matters and/or quasi judicial functions, is a very fine one. In judicial process it is an expected norm that every fraudulent act frustrates the reliefs. The Division Bench decision of this court in Writ Petition No.31 of 2005 (Vimal Vitthal Chavan vs Nava Maharashtra Education Society- a Trust and ors decided on 8th August 2005) can be usefully referred at this stage for holding that clean hand doctrine commands that every equity will not grant relief to a party who seeks to set the judicial machinery in motion and obtains some benefit and if such party in her conduct has violated the conscience or good faith or other equitable principles. The court also held as under:
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> 1. In *S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs & Ors.* [(1994) 1 SCC 1], the Court observed that
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> "…The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is

being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation… A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage… A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

2. In a well-known case, *Chittaranjan Das v. Durgapore Project Limited & Ors. (99 CWN 897)*, the Court observed that "Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation. It is now well known that a fraud vitiates all solemn acts."

3. Reliance was also placed on a Division Bench judgment of Delhi High Court in *Jeevan Kumar & Anr. v. Union of India* [2002 VII AD (Delhi) 100], wherein the Court held that those who seek equity must approach the Court with clean hands.

4. In *Rajabhai Abdul Rehman Munshi v. Vasudev Dhanjibhai Modi* reported as 1964 (3) SCR 480, Their Lordships of the Supreme Court observed that a party who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice, the Court would not grant special leave, and persuades the Court to grant leave to appeal is guilty of conduct, forfeiting all claims to the exercise of discretion in his favour. It is his duty to state facts which

may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material information would result in revocation of the order obtained from the Court.

5. In *Har Narain v. Badri Das* reported as AIR 1963 SC 1558, Their Lordships of the Supreme Court observed that it is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. The special leave granted by the Supreme Court in this case was revoked and the appeal was, without dealing with the merits of the case, dismissed with costs.

6. In *Asiatic Engineering Co. v. Achhru Ram*, AIR 1951 Allahabad 746 (Full Bench), the Court observed that no relief can be granted in a writ petition which is based on misstatement or suppression of material facts. The Court observed in paragraph 51, page 767 –

"In our opinion, the salutary principle laid down in the cases .. should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court under Art. 226 of the Constitution. A person obtaining an *ex parte* order or a *rule nisi* by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining *ex parte* orders by suppression, misrepresentation or misstatement of facts.**"**

7. In *Udai Chand v . Shankar Lal & Ors.* (1978) 2 SCC 209, the Court revoked the special leave petition and vacated the stay order. The Court,

while following the ratio of the aforementioned cases, observed that the Supreme Court would be justified in revoking the leave to appeal if the same was obtained by making misstatement of a material fact. Special leave already granted was revoked and consequently, appeal was dismissed with costs. This principle has been consistently followed in a number of other cases by various Courts.

8. Reliance was placed on *New India Steel Industries v. V.D. Steel Industries & Anr.* reported as (1981) 2 SCC 16. The Court observed:

"After hearing counsel for the parties we allow CMP 6495 of 1980 for the revocation of special leave petition granted as per this Court's order dated December 12, 1979. There are two facts which stand out. Firstly, the appellant had made a misstatement of material fact that the proclamation of sale did not contain any note that the property was being sold subject to the mortgage charge of Rs.1,65,000/-. In fact, such a note does exist. Secondly, he misconducted himself inasmuch as he published a public notice captioned as 'Court Notice' on April 12, 1980, as if that notice was being published under the orders of this Court. For these two reasons we revoke the special leave petition granted earlier and dismiss the appeal arising out of that SLP. The stay already granted automatically stands vacated."

9. On the overall conduct of the parties, reliance was also placed on the Supreme Court judgment in *Ram Chandra Singh v. Savitri Devi* [2003 (8) Scale 505]. In this case, a very important principle of law has been crystallised when the Apex Court observed that fraud, as is well known, vitiates every solemn act. Fraud and justice never dwell together.

10. The Delhi High Court in *Dr. Manmonhan Singh Dhaliwal v. Gurbax Singh Arora & Ors.* reported as 94 (2001) DLT 820 observed that the main function of the Court is to administer justice. Judgment or order procured by playing fraud

upon the Court cannot be rammed down the throat of the aggrieved party. Justice and fraud are aliens to each other. Fraud pollutes the sanctity and solemnity of the judicial proceedings. This is why the Courts have inherent powers to recall or set aside such a judgment or order.

11. In *Derry and Ors. v. Peek*, (1886-90) All ER 1, the English Court described what constitutes 'fraud' thus: " 'Fraud' is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

5. In a recent judgment of the Surpeme Court in the case of A.V.Papayya Sastry and ors vs. Government of A.P and ors, AIR 2007 SC 1546 signifying that falsehood or fraud even vitiates judicial act, the Court held as under:

"Now, it is well settled principle of law that if any judgment and order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal"

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order- by the first court or by the final court- has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings".

In the leading case of Lazarus Estates Ltd vs Beasley (1956) 1 All ER 341, Lord Denning observed:(All ER p 345.C)

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud".

In Duchess of Kingstone, Smith's Leading cases, 13th Edn, P 644, explaining the nature of fraud, de Grey,C.J. Stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment".

It has been said: fraud and justice never dwell together (fraus et jus nunquam cohabitant): or fraud and deceit ought to bnefit none (fraus et dolus nemini patrocinari debent).

Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as "wholly perverse". Kuldip Singh J. stated (SCC p.5.para 5):

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabers, tax-evaders, bank-loan-dogers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

In the above case the court also further held that even “the principle of finality of litigation cannot be pressed to the extent of such an absurdity that if becomes an engine of fraud in the hands of dishonest litigants”.

6. A reference can also be made to the judgment of the Supreme Court in the case of Kumari Madhuri Patil and anr vs. Addl. Collector, Tribal Development and ors, 1995(2) Bom C.R. 690 where the court cautioned the authorities to act free of provocative values and held that even judiciary had no jurisdiction. While upholding the cancellation of the certificate in that case the Court held as under:

“5. The Committee as well the Addl. Commissioner relied upon a report of expert committee which had gone into the sociological, anthropology and ethnology of the Scheduled Tribes including "Mahadeo Koli" which formed the basis for the proforma questionnaire prepared by the Government and as given to and answered by the father of the appellants. On the basis of the information furnished by the father of the appellants and the anthropological and ethnology findings in that behalf, the Addl. Commissioner, in our view rightly, held that an argument of social mobility and modernisation often alluringly put-forth to obviate the need to pass the affinity test is only a convenient plea to get over the crux of the question. Despite the cultural advancement, the genetical traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may be modernised and progressed but they would not be oblivion to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The Mahadeo Koli a Scheduled Tribe declared in the Presidential Notification 1950, itself is a tribe and is not a sub-caste. It is a hill tribe, may be like "Koya" in Andhra Pradesh. Kolis, a backward class, are fishermen by caste and profession and reside mostly in Maharashtra coastal area. Kolis have different sub castes. Mahadeo Kolis reside in hill regions, agriculture, agricultural

labour and gathering of minor forest produce and sale thereof is their avocation. Therefore, the cancellation of the social certificate issued by the concerned Executive Magistrates by the Scrutiny Committee was legal.

9. The Preamble to the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring the dignity of the individual. The Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the main stream of national life and with their traditional moorings and customary beliefs and practices, they are largely governed by their own customary Code of Conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. The Constitution guarantees to them who are also Indian citizens of equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibits discrimination among citizens on certain grounds, Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State Govt. or public undertakings etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein, to promote with special care the educational or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from 'social injustice' and 'all forms of exploitation'. Article 51A(h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article 51A(h) requires every citizen is strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and humanism and spirit of inquiry to reform himself in his onward thrust or his strive to improve excellence in all spheres of individual and collective activity. Since the Scheduled Tribes are a nomadic

class of citizens whose habitants being generally hilly regions or forests, results in their staying away from the main-stream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live in dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of States' policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a Notification specified the Scheduled Tribes or tribal communities or parts or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights. The Union of India and the State Governments have prescribed the procedure and has entrusted duty and responsibility to Revenue officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfill constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as person entitled to such status while in fact disentitled to such status. The case in hand is a clear instance of such pseudo status. Kolis have been declared to be OBC in the State of Maharashtra being fishermen, in that their avocation is fishing and they live mainly in the coastal region of Maharashtra. Mahadeo Kolis are hill tribes and it is not a sub-caste. Even prior to independence, the Maharashtra Govt. declared Mahadeo Koli to be criminal tribe as earlier as May 29, 1933 in serial No. 15 in List II thereof. In 1942 resolution in serial No. 15 in Schedule B of the Bombay resolution Mahadeo Koli tribe was notified as

a Scheduled Tribe. It was later amended as serial No. 13. In the Presidential Scheduled Castes/Scheduled Tribes Order 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated October 29, 1956. In 1976 Amendment Act, there is no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be a Scheduled Tribe even after independence. The Presidential Notification 1950 also does recognise by public notification of their status as Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in Subhash Ganpatrao Kabade's case, that Mahadeo Koli was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe is not relatable to reality and an erroneous assumption made without any attempt to investigate the truth in that behalf. Presidential declaration, subject to amendment by the Parliament being conclusive, no addition to it or declaration of castes/tribes or sub-castes/parts of or groups of tribes or tribal communities is permissible.

12. We have seen that Scrutiny Committee proceedings although started on December 8, 1989 and were prolonged till June 26, 1992. We do not have record to scan the reasons for the delay. It would appear that the Constitution of a Committee with large number of members and Secretary as Chairman must have greatly contributed for the delay in deciding the claims for the social status. A right of appeal provided thereafter compounded further delay though the Addl. Commissioner on the facts of this case has disposed of the appeal very expeditiously. However, all of them are the contributory factors for the delay.

13.The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or

spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following ....."

In this connection a reference can also be made to a recent judgment of the Division Bench of this court in the case of Priti Girijashankar Varma vs State of Maharashtra and ors, Writ Petition Lodging No. 634 of 2007 decided on 21st June 2007."

The petitioner has also relied upon the decision of the Division Bench of this Court in the case of Anil Vasantrao Shirpurkar vs State of Maharashtra and ors, 2002(4) Mah L J 365.

The contention that there was inordinate delay in taking the action beyond reasonable time and the proceedings were vitiated and as such the actions is vitiated and the certificate issued in favour of the petitioner cannot be set aside, the petitioner has placed reliance in the case of Chandrabhan Yamaji Nandanwar vs Director of Health Services, Maharashtra State, Bombay and ors, (1999(1) Mah L J 536. The above judgment was also referred to in the judgment in the case of Parinda Milind Keer (supra). Furthermore, it may not be permissible to this court to follow the Division Bench decision of this court which stare state and various judgments of the Supreme Court squarely cover the controversy in the present case. In the case of R Vishwanatha Pillai vs State of Kerala and ors, (2004) 2 SCC 105 where the court held that the appointment obtained against reserve post by producing false caste certificate is per se non est. Further in the case of Bank of India

> and anr vs Avinash D Mandivikar and ors, 2006(1)47, the Supreme Court repelled the contention that if the certificate was obtained by fraud by the petitioner would have no relevancy and mere delay wold not per se sufficient to set aside the order of the Scrutiny Committee. In this connection a reference can also be made to the decision of the Supreme Court in the case of State of Maharashtra anr ors vs. Sanjay K Nimbje, (Appeal (Civil) No.231 of 2007 decided on 16th January 2007). The petitioner has approached this court under Article 226 of the Constitution which itself is equitable jurisdiction. One who claims equity must do equity. The petitioner invoking the extra ordinary jurisdiction of the court under Article 226 of the Constitution should approach the court with clean hands."

9. The above enunciated propositions of law clearly show that a person who has obtained the benefit of employment on the basis of an incorrect certificate or a certificate obtained by misrepresentation or fraud, cannot be permitted to avail the benefit thereof, once it comes to the notice of the concerned authorities. Mere fact that there is some delay in noticing the same would not give the petitioner any advantage. Furthermore the action taken by the authorities is within a reasonable period as considerable time was taken by the vigilance cell in investigating the matter and thereafter the petitioner participated in the entire proceedings to put forward his case. After appreciation of this evidence, once the Scrutiny committee has arrived at the finding of fact that the certificate was false and was not correctly obtained, there is no scope for this court to

interfere in exercise of its powers under Article 226 of the Constitution.

The writ petition is accordingly dismissed, leaving the parties to bear their own costs. Rule discharged.

CHIEF JUSTICE

Dr.D.Y. CHANDRACHUD, J.